IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 253 to 256 & 271 of 1981

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BACHUBHAI DIPCHAND,SINCE DECD.THRU HIS HEIRS & L.RS.

Versus

KOLI KALUBHAI KEVABHAI

Appearance:

1. First Appeal No. 253 of 1981

MR RJ OZA for Petitioner No. 1-1/7

NOTICE UNSERVED for Respondent No. 1

MR RAJNI H MEHTA for Respondent No. 2

MR SURESH M SHAH for Respondent No. 3-10

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 04/02/2004

ORAL JUDGEMENT

1. Heard Mr. R.J. Oza, learned advocate for the appellant, Mr. Rajni H. Mehta, learned advocate for the respondent no.2 and Mr. Suresh M. Shah, learned advocate for the respondent nos.3 to 10.

2. These appeals under Section 110 of the Motor Vehicles Act are preferred by the owner of the Truck bearing No.GTZ 2152 involved in the accident dated 3.4.1979, being aggrieved with the judgment and award rendered in M.A.C.Petition No.84,85,86/1979, 55/1980 and 105/1980 by the Motor Accident Claims Tribunal, Bhavnagar.

3. By the impugned judgment and award the claims Tribunal dismissed the petitions of the claimants against the respondent Insurance Company holding the owner of the vehicle involved in the accident liable to pay compensation to the injured as well as the dependents of the persons, who lost their lives in the accident.

4. The question involved relates to the liability of the Insurance Company in case of death/injury sustained by the persons carried in goods vehicle in view of section 95 (1) (b) of the Act of 1939 (Section 147(1) (b) of 1988 Act).

5. It is not disputed that the accident in question took place on 3.4.1979 on Rajkot - Bhavnagar Highway near Village Rangola wherein 3 persons lost their lives and 4 persons sustained injuries. It is suggested from the impugned judgment and award and not disputed by learned advocate appearing for the appellant that the victims / deceased were the gratuitous passengers travelling in a goods carriage.

6. In the case of Mallawwa and Others Vs. Oriental Insurance Co. Ltd. and Others, 1999 Accident Claims Journal Page 1 while considering the provisions of Section 95(1)(b) of the Motor Vehicles Act,1939 (Section 147 (1)(b) of 1988 Act), the Supreme Court in the contest of the liability of the Insurance Company in case of an accident to a goods vehicle for death or injuries sustained by the persons carried in a goods vehicle either along with their goods or after paying fare or gratuitously, held, in such cases the Insurance Company would not be liable to pay compensation to the victims in the incident.

In Para.10, it has been observed that, "keeping in mind classification of vehicles, by the Act, the

requirement of registration with particulars including the class to which it belonged, requirement of obtaining a permit for using the vehicle for different purposes and compulsory coverage of insurance risk, it would not be proper to consider a goods vehicle as a passenger vehicle on the basis of a single use or use on some stray occasion of that vehicle for carrying passengers for hire or reward. For the purpose of construing a provision like proviso (ii) to Section 95(1)(b), the correct test to determine whether a passenger was carried for hire or reward, would be whether there has been a systematic carrying of passengers. Only if the vehicle is so used then that vehicle can be said to be a vehicle in which the passengers are carried for hire or reward .....".

In Para.11, it has been observed that, "though, the conclusion was arrived at after taking into consideration the Orissa Motor Vehicles Rules, in our opinion the said view is correct, even otherwise also. In view of what we have said, the contrary view expressed by other High Courts has to be regarded as incorrect."

In Para.14, it has been observed that, "1939 Act is now replaced by 1988 Act. Section 147 which corresponds to old section 95 has been substantially altered by the legislature. Therefore, interpretation of 95 of the 1939 Act will govern the cases which have arisen under the 1939 Act. According to our interpretation of Section 95 (1)(b) (i) and the proviso, the appeals filed by the Insurance Company are allowed. .... SLP (C) No.9727 of 1989 filed by the owner of the vehicle is also dismissed."

8. Thus, it will be seen that the present case is squarely covered by the decision in the case of Mallawwa (Supra) as the present case falls within the ambit of Act of 1939 and therefore, the present appeals preferred by the owner of the vehicle are liable to be dismissed.

9. In the result, appeals fail. No order as to costs.

10. In view of the above, the claimants in each of the claim petitions would be entitled to withdraw 25% of the awarded amount deposited with the claims Tribunal pursuant to the earlier order passed by this Court. The claimants shall also be entitled to encash the bank guarantee in respect of the remaining 75% of the amount awarded by the claims Tribunal.

11. The Registry is directed to place the copy of

this judgment on the file of all connected matters.

(N.G.Nandi,J.)
(vipul)